

INSURANCE DEPARTMENT OF THE STATE OF NEW YORK
REGULATION NO. 144
(11 NYCRR 39)

**Art 39. MINIMUM STANDARDS FOR THE LONG-TERM CARE SECURITY
DEMONSTRATION PROGRAM ESTABLISHED UNDER CHAPTER 454 OF
THE LAWS OF 1989**

(Statutory authority: Insurance Law, §§ 201, 301, 3201, 3217, 3221, 3229, 4235 ,
4237; art. 43; Social Services Law, § 367-0

Historical Note

Part (§§ 39.0-39.3) filed Nov. 10, 1992 eff. Nov. 25, 1992.

§ 39.0 Preamble.

Historical Note

Cross Reference

Research Reference

The Long-Term Care Security Demonstration Project, hereafter called the project, was established under chapter 454 of the Laws of 1989. The purpose of the legislation is to offer citizens of New York State who purchase a long-term care insurance policy/certificate qualifying under this Part and who exhaust benefits under such policy/certificate special eligibility for long-term care protection through the New York State Medicaid program.

Historical Note

Sec. filed Nov. 10, 1992 eff. Nov. 25, 1992.

Cross Reference

Long term care security demonstration program for long term care, CLS Social Services Law §367-f

Research Reference

88 NY Jur 2d, Public Welfare and Old Age Assistance §163

§ 39.1 Approval of qualified policies/certificates under the project.

Historical Note

Cross Reference

Research Reference

(a) Policies/certificates sold in conjunction with the project must be approved by the Superintendent of Insurance of New York State as meeting the minimum standards required under this Part and other pertinent authority as required by law. Policies/certificates approved as meeting the requirements stated herein shall be designated as qualified by the presence of a project logo that shall be displayed on any products advertised, marketed, offered, or sold. The project logo on each policy/certificate sold shall be numbered. In addition, each approved policy/certificate sold will include a notice to the insured stating that the policy/certificate qualifies under the project.

(b) Except as otherwise stated in this Part, all definitions, requirements, and regulations applicable to the marketing, issuance, offering, administration, advertising, and maintenance of long-term care insurance policies/certificates as contained in Part 52 of this Title, the Insurance Law, and other statutes shall apply to a policy/certificate sold under the project.

Historical Note

Sec. filed Nov. 10, 1992 eff. Nov. 25, 1992.

Cross Reference

Long term care security demonstration program for long term care, CLS Social Services Law §367-f

Research Reference

88 NY Jur 2d, Public Welfare and Old Age Assistance §163

§ 39.2 General conditions governing the project.

Historical Note

Cross Reference

Research Reference

Participation in the project shall be open to residents of New York State and insurers licensed to do business in the State. Qualified policies/certificates sold under the project shall provide that benefits are payable regardless of the insured's residence at the time of eligibility for policy/certificate benefits subject to policy/certificate provisions relating to limitations on coverage outside of the United States. However, the special eligibility for long-term care protection through the New York State Medicaid program shall be void unless the insured is eligible to receive approved services under the New York State Medicaid program when such special eligibility occurs. This fact shall be prominently disclosed on the face page of the policy/certificate.

Historical Note

Sec. filed Nov. 10, 1992 eff. Nov. 25, 1992.

Cross Reference

Long term care security demonstration program for long term care, CLS Social Services Law §367-f

Research Reference

88 NY Jur 2d, Public Welfare and Old Age Assistance §163

§ 39.3 Minimum benefit standards for qualified policies/certificates.

Historical Note

Cross Reference

Research Reference

(a) Basic project minimum coverage requirements. All project participating insurers must offer a basic policy/certificate providing minimum coverage under this Part. Additional products which exceed the basic policy/certificate minimum coverage will be permitted.

(b) Minimum benefit standards. To be approved as a qualified policy/certificate under this Part a policy/certificate shall provide coverage on an expense incurred, indemnity, prepaid, or other basis and provide at least the following benefits:

(1) Nursing home care. Nursing home care coverage shall be provided for not less than a lifetime maximum total of 36 months for each covered person. A covered person must be permitted to substitute home care benefits for nursing home care benefits on the basis of two home care days for one nursing home day. Coverage of nursing home care shall consist of payment for skilled nursing care, intermediate care, and custodial care in nursing homes of at least \$100 per day. Payment for nursing home care services may be limited to services rendered in a nursing home licensed by the jurisdiction in which it is located. The minimum nursing home daily benefit shall be increased each year on the first day of January beginning in 1994. Policies/certificates sold after January 1, 1994 shall provide benefits at the increased minimum standard in the year sold. Minimum daily benefits for the next 10 years shall be as follows:

- (i) January 1, 1993 - \$100 (nursing home), \$50 (home care - 50 percent);
- (ii) January 1, 1994 - \$105 (nursing home), \$52 (home care - 50 percent);
- (iii) January 1, 1995 - \$110 (nursing home), \$55 (home care - 50 percent);
- (iv) January 1, 1996 - \$116 (nursing home), \$58 (home care - 50 percent);
- (v) January 1, 1997 - \$122 (nursing home), \$61 (home care - 50 percent);
- (vi) January 1, 1998 - \$128 (nursing home), \$64 (home care - 50 percent);
- (vii) January 1, 1999 - \$134 (nursing home), \$67 (home care - 50 percent);
- (viii) January 1, 2000 - \$141 (nursing home), \$70 (home care - 50 percent);
- (ix) January 1, 2001 - \$148 (nursing home), \$74 (home care - 50 percent);
- (x) January 1, 2002 - \$155 (nursing home), \$77 (home care - 50 percent).

(2) Home care. Home care coverage shall be provided when services are rendered in the insured's place of residence, in a group setting such as an adult day care center, or where human assistance is required by the insured to aid in necessary travel, such as to a physician's office.

(i) Home care benefits shall be payable for at least the following services: skilled nursing care, home health care, personal care, assisted living and adult day care, provided that such services are rendered by entities licensed and/or certified by the Department of Health or agencies exempt from licensure or certification in accordance with articles 28 and/or 36 of the Public Health Law or section 505.14 of the Social Services Law and regulations promulgated thereunder. Payment for home care services received outside of New York State may be limited to services rendered by an entity licensed to provide such services in the jurisdiction where the services were rendered. It is also required that the insured patient has incurred expense for the cost of a covered service.

(ii) For the purpose of special eligibility for long-term care protection through the New York State Medicaid program under a qualified policy/certificate, a covered person must be permitted to substitute home care benefits for nursing home care benefits on the basis of two home care days for one nursing home day. Complete substitution of

home care benefits for nursing home care benefits would result in a lifetime maximum total of 72 months of home care benefits.

(iii) The minimum home care coverage to be offered will be payable in an amount of at least 50 percent of the current minimum nursing home care benefit as stated in this Part. This minimum home care coverage amount shall continue to be the minimum home care benefit standard regardless of the amount of nursing home coverage actually purchased.

(iv) Home care coverage which exceeds the minimum benefit standards shall not affect the requirement for a lifetime maximum total of 72 months of home care benefits. However, at the discretion of the insurer, it shall be permissible to combine benefit days to pay an amount in excess of the daily benefit amount set forth in the policy/certificate. In no case where benefit days have been combined shall the equivalent of more than 31 days of home care benefits be paid in any one-month period.

(3) Respite care. Respite care, meaning nursing home and/or home care services provided in lieu of informal caregiver services, for at least 14 days coverage, shall be renewable annually. Covered days of respite care need not be consecutive and shall be paid at a daily amount equal to that provided for nursing home care under the policy or certificate regardless of where the respite care services are actually rendered and regardless of the actual cost of such services. Payment for respite care services may be conditioned upon the following:

(i) a covered person's eligibility to receive policy/certificate benefits for a period not to exceed six consecutive months without regard to receipt of formal nursing home and/or home care services and without regard to satisfaction of policy/certificate waiting periods;

(ii) expenses for respite services qualifying under the policy/certificate are incurred;

(iii) once the requirement of subparagraph (i) of this paragraph has been met an insurer may not impose another such requirement unless the covered person is no longer eligible to receive policy/certificate benefits; or the policy/certificate is lapsed or cancelled; or benefits under the policy/certificate are exhausted.

(4) Alternate care. Where an otherwise covered person is unable to obtain access to nursing home care or home care services, and the covered person is in a hospital setting awaiting the availability of such services, and has been determined by the attending physician to be in alternate care status, such covered person shall, for the purpose of benefit eligibility including the satisfaction of any elimination period, be deemed to be receiving the nursing home care or home care services for which such covered person is awaiting placement. Benefit payments while the covered person is in alternate care status shall be the nursing home daily benefit in effect under the policy/certificate.

(5) Inflation protection. Qualified policies/certificates shall provide lifetime inflation protection no less than five percent compounded on an annual calendar or policy year basis. Inflation protection shall be mandatory except if the policy/certificate is purchased at or after age 80.

(6) Level premium. Step rate premiums, policy/certificate options to increase benefits, or any premium payment feature where the premium rate rises automatically after issuance shall not be permitted. Premiums for qualifying policies/certificates shall be level for the duration of the policy/certificate except where a rate increase is granted by the Superintendent of Insurance for all persons covered by a specific policy/certificate form.

(7) Replacement. If a long-term care insurance policy/certificate qualified under this Part replaces another qualified long-term care insurance policy/certificate under this Part, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, and probationary periods in the new long-term care policy/certificate to the extent such time has elapsed under the original policy/certificate. The insurer may, however, exercise any legal rights available with regard to alleged fraud or material misrepresentation in obtaining the replacement policy/certificate.

(8) Policy/certificate modification provision in the event of a national long-term care program. Qualified policies/certificates shall include a provision for modification of such policies/certificates in the event of enactment of a national long-term care program using public funds which program duplicates coverage provided under qualified policies/certificates. The modification provision must state that the policy/certificate will be amended to the extent possible to provide benefits appropriately interrelated with the national program. In the event of modification or, if necessary, termination the insurer must submit a plan to the superintendent providing for any premium adjustment or refund required as a result of modification or termination.

(9) Elimination periods. Elimination periods no greater than 100 days are permitted in qualified policies/certificates. Only a single elimination period for all covered services will be permitted. The commencement of a new elimination period is permitted only when a period of care is separated from another period of care by more than six months.

Historical Note

Sec. filed Nov. 10, 1992 eff. Nov. 25, 1992.

Cross Reference

Long term care security demonstration program for long term care, CLS Social Services Law §367-f

Research Reference

88 NY Jur 2d, Public Welfare and Old Age Assistance §163